

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STEPHEN NICHOLAS LYNCH,)	
)	
Appellant,)	
v.)	Case No. 15-cv-00364-JED-FHM
)	
KENNETH K. KLEIN, JUDI KLEIN; KRISTIN)	Adv. Case No. 14-01059-TRC
KLEIN DAFFERN; ERIC M. DAFFERN; KLEINCO)	
RESIDENTIAL CONSTRUCTION, LLC, an)	
Oklahoma Limited Liability Company; ROBERT B.)	
SARTIN; PATRICK J. MALLOY, III;)	
BOKF, N.A.; SCOTT F. LEHMAN; CFR, INC.;)	
WESTPORT INSURANCE CORPORATION;)	
BRUCE A. McKENNA; CHRISTOPHER PETTET;)	
VALERIE MITCHELL; DISTRICT COURT IN)	
AND FOR OSAGE COUNTY, OKLAHOMA;)	
DISTRICT COURT FOR TULSA COUNTY,)	
OKLAHOMA,)	
Appellees.)	

**MOTION OF APPELLEES, KENNETH K. KLEIN, JUDI KLEIN, KRISTIN KLEIN
DAFFERN, ERIC M. DAFFERN, KLEINCO RESIDENTIAL CONSTRUCTION, LLC,
ROBERT B. SARTIN AND STEVEN W. SOULE FOR DISMISSAL OF APPEAL FOR
ABANDONMENT OF CLAIMS AND PARTIES
AND REQUEST FOR EXPEDITED CONSIDERATION¹**

Appellees, Kenneth K. Klein, Judi Klein, Kristin Klein Daffern, Eric M. Daffern, Kleinco Residential Construction, LLC, Robert B. Sartin, and Steven W. Soule (collectively “Kleinco”), request entry of an Order dismissing certain parties and theories of recovery attempted to be set forth in the Appellant’s Amended Adversary Complaint, the dismissal of which by the Bankruptcy Court resulted in the commencement of this appeal. In support of this Motion, Kleinco states:

1. Appellant’s Amended Adversary Complaint was filed on December 24, 2014. N.D. Okla. Bankruptcy Adversary Proceeding case no. 14-01059-TRC, Dkt. # 12 ;

¹ Although somewhat factually distinct, the legal basis asserted herein is the same legal basis that is being asserted by the remaining Appellees in their respective Motions to Dismiss filed contemporaneously herewith.

2. The Amended Adversary Complaint² contained the following theories of recovery:
- a. First Cause of Action:³ Challenging the Bankruptcy Court's Order Approving Settlement/Compromise of claims between Kleinco and the Lynches;
 - b. Second Cause of Action: Challenging the Bankruptcy Court's Order of Compromise based on a claimed fraud perpetrated on that court;
 - c. Third Cause of Action: Challenging the Bankruptcy Court Orders granting relief from the automatic stay to Kleinco and BOKF based on a claimed fraud on that court;
 - d. Fourth Cause of Action: For relief based on alleged violations of the automatic stay by CFR;
 - e. Fifth Cause of Action: For relief based on alleged violations of the automatic stay by Appellees Kleinco, Robert Sartin, Esq., and Eric Daffern, Esq.;
 - f. Sixth Cause of Action: For relief based on alleged violations of the automatic stay by Appellees Christopher Pettet and Valerie Mitchell;
 - g. Seventh Cause of Action: For relief based on alleged violations of orders of the Bankruptcy Court for selling the Appellant's foreclosed home at sheriff's sale;
 - h. Eighth Cause of Action: For relief against Appellees BOKF and Scott Lehman, Esq., related to the pursuit of the Osage County Foreclosure Case, for perpetrating a fraud on that court, and for violations of the automatic stay;
 - i. Ninth Cause of Action: For relief based on Kleinco's commencement of the Tulsa County Litigation and fraud on that court perpetrated by Appellees Kleinco, Robert Sartin, Esq., and Eric Daffern, Esq.;
 - j. Tenth Cause of Action: For relief from the alleged fraud committed by Appellees BOKF, Lehman, Kleinco, Daffern, Sartin, and Steve Soulé, Esq., by attempting to "claw back" the Appellant's home into the bankruptcy estate;
 - k. Eleventh Cause of Action: For relief based on all Appellees having engaged in a conspiracy, the purpose of which was to engage in a course of

² The Original Adversary Complaint had identified Bankruptcy Judge Terrence L. Michael as an additional Defendant. Of course, Judge Michael was dismissed from the proceeding. BOKF and Lehman were recently dismissed from the proceeding as well as a "walk away," where no monetary consideration was given by BOKF or Lehman in exchange for the dismissal.

³ Appellant's use of the phrase "cause of action" represents a basic misunderstanding of what comprises a cause of action as opposed to what represents a "theory of recovery."

conduct to commit fraud and engage in the malicious prosecution and abuse of process of the Appellant;

- l. Twelfth Cause of Action: For misappropriation of funds by Appellee, Robert Burton, Esq., and violation of a bankruptcy court order directing him to pay the funds to a third party; and
- m. Thirteenth Cause of Action: For relief due to an alleged conflict of interest by Appellee, Robert Sartin.

Id.;

3. Kleinco filed a Motion to Dismiss the Amended Adversary Complaint based on the Appellant's failure to state a claim upon which relief could be granted;

4. In an Opinion and Order of Dismissal (the "Dismissal Order"), the Bankruptcy Court dismissed all claims against all Appellees. *Id.* at Dkt. # 105;

5. Appellant filed his Brief in Chief in this Court on December 25, 2015. Dkt. # 54;⁴

6. Appellant's Brief only addresses the First and Second Causes of Action in the Amended Complaint;

7. Appellant's Brief does not address the Third through the Thirteenth Causes of Action (the "Abandoned Causes of Action");

8. Appellant's Brief asks only that this Court reverse the dismissal of the First and Second Causes of Action in the Amended Complaint;

9. Appellant does not request reversal of the dismissal of the Abandoned Causes of Action;

10. Consequently, Kleinco asserts that Appellant has abandoned the Abandoned Causes of Action against Kleinco;

⁴ This Court's briefing schedule entered on November 23, 2015, Dkt. # 50, required that the Appellant's Brief in Chief be filed not later than December 23, 2014. The Appellant did not request the agreement of any Appellee to the late filing of the Brief and never filed any motion with this Court to extend the December 23, 2015, deadline.

11. Appellant's Brief does not address Judi Klein, Kristin Klein Daffern and Eric M. Daffern (the "Abandoned Parties"). Specifically, Appellant's Brief does not request reversal of the claims asserted against the "Abandoned Parties."

12. Consequently, Kleinco asserts that Appellant has abandoned all of his claims against the Abandoned Parties.

13. Pursuant to the Court's briefing schedule, the Appellees' Briefs are to be filed not later than February 8, 2016. Dkt. # 50;

14. Appellees are contemporaneously filing herein a combined joint motion to stay the date for the filing of their Response Briefs and a request that this Court shorten Appellant's response time to that Motion so as to identify the issues that are truly before this Court insofar as Appellee's briefs are concerned;

15. Inasmuch as the deadline for filing Appellees' briefs is less than 30 days after the filing of this Motion, expedited consideration hereof will provide sufficient time for this Court to determine whether to dismiss this appeal as to the Abandoned Causes of Action and the Abandoned Parties to allow Kleinco sufficient time to prepare and file an appellee brief in the event this Court does not dismiss this appeal as requested herein.

WHEREFORE, the Court is requested to enter its Orders as follows:

- (a) Dismiss this appeal, with prejudice, as to the Third through the Thirteenth Causes of Action;
- (b) Dismiss this appeal, with prejudice, in its entirety as to Appellees, Judi Klein, Kristin Klein Daffern and Eric M. Daffern;
- (c) Grant expedited consideration to this Motion; and

(d) Grant to Appellees, Kenneth K. Klein, Judi Klein, Kristin Klein Daffern, Eric M. Daffern, Kleinco Residential Construction, LLC, Robert B. Sartin, and Steve Soule, such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/ Robert B. Sartin

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Attorneys for Appellees, Kenneth K. Klein, Judi Klein, Kristin Klein Daffern, Eric M. Daffern, Kleinco Residential Construction, LLC, Robert B. Sartin and Steven W. Soule

CERTIFICATE OF SERVICE

On January 12, 2016, I electronically submitted the foregoing document to the Clerk of the Court of the United States District Court for the Northern District of Oklahoma, using the electronic case filing (ECF) system of the Court. I hereby certify that I will serve all parties individually or through their counsel of record, electronically, or by other means authorized by the Court or the Federal Rules of Civil Procedure.

S/ ROBERT B. SARTIN

ROBERT B. SARTIN